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LIABILITY OF MASTER FOR FAILURE TO WARN INEXPERIENCED SERVANT OF DANGERS OF EMPLOYMENT.

In the late case of *Fletcher Bros. v. Hyde*, 75 N. E. 9, the Appellate Court of Indiana handed down an interesting opinion upon the question of the liability of a master, who, without instruction or warning, knowingly directed an inexperienced employee to aid in the moving of certain trusses and assigned to him a dangerous position, where, by reason of the breaking of the apparatus supporting the truss and the employee's ignorance of the method of handling the same, and of the proper manner in which to protect himself, such employee was seriously injured. It must be remembered that each state has its own regulations in regard to liability in such cases. Notwithstanding this, there seems to be a strong tendency amongst the authorities, as seen by the adjudicated cases, to the effect that the master is liable in such cases, even where the danger is obvious. Neither an employer or any other proprietor has a right to direct an employee to do a particular act, and expect that employee to take precautions against dangers unknown to him. It may frequently happen that the dangers of a particular position for, or mode of doing work, are great, and apparent to persons of capacity and knowledge of the subject, and yet a party from inexperience, ignorance, or general want of capacity and knowledge may fail to appreciate them. It would be a breach of duty on the part of the master to expose a servant of this character, even with his own consent, to such dangers, unless with instructions or cautions sufficient to en-

able him to comprehend them, and do his work, with proper care on his part, with safety. A service which involves obvious dangers may be performed in comparative safety by one of experience, or sufficient instruction, while the same service will be attended with almost certain injury if attempted by one who has had neither experience or instruction. In such a case, the employer, who, with knowledge of the want of experience of an employee, nevertheless, without instruction or warning, exacts from him a service which requires the observance of extraordinary caution or the exercise of peculiar skill in order that an apparent danger may be avoided, may be liable for the injury. *Ry. Co. v. Wright*, 115 Ind. 378; *Ryan v. Tarbox*, 135 Mass. 294; *Sullivan v. Man. Co.* 113 Mass. 396. It is a well known rule that a servant when he enters upon employment which is from its nature necessarily hazardous. assumes the usual risks and perils of the service, and this is especially so as to all those risks which require only the exercise of ordinary observation to make them apparent. In such cases, there is held to be an implied contract on the part of the employee to take all the risks of the service, and to waive any right of action against the employer arising from such risks. *Engine Works v. Randal*, 100 Ind. 293. The severity of these principles, however, is relaxed measurably in favor of employees, in case the danger is not open to observation or ordinary inspection, or in case the employee is known not to be of sufficient capacity or experience to appreciate the dangers, or to know how to perform the requisite service, and yet avoid the obvious hazard. *Pittsburgh v. Ry. Co.* 105 Ind. 151.

It must be presumed that an employee will not undertake to perform labor or operate machinery concerning which he has no knowledge or experience. Hence, his willingness to undertake the work is sufficient to warrant the employer in assuming that he is competent, unless, as in the present case, it is shown that the master knows to the contrary. *Nail Co. v Connelly*, 8 Ind. App. 398

The decisions, however, in other jurisdictions seem to favor a less stringent rule in regard to the liability of an employer in such cases. Thus it is held that the master is not bound to exercise the highest possible diligence to instruct the employee in every conceivable particular of the circumstances in which he might be placed, or in every possible detail of his conduct in the performance of his duties. The requirement in this respect is only that the employer exercise ordinary and reasonable care to see that the employee possesses a competent knowledge of the peculiar dangers to which he is exposed in doing his work, and the precautions necessary to be taken to guard himself against those dangers; and in the exercise of that care the master has the right to assume that the servant brings to the work ordinary intelligence and power of observation, and the capacity to learn something by observation. *Oberlies v. Bullinger*, 27 N. Y. Supp. 16; *De Forrest v. Jewett*, 23 Hun. 4. If the servant is ignorant of the method of operating certain machinery with which he is to work, it is his duty to inform the employer, and if he conceals his inexperience,

and undertakes to work with the machinery, with the operation of which he is unfamiliar, and is injured by reason of his inexperience, the employer is not answerable therefor. When a servant undertakes to engage in a master's service, and to perform certain duties, the master has a right to assume that he is qualified to perform the duties of the position he seeks to occupy, and competent to apprehend and avoid all obvious hazards of such service. *Bellows v. Ry. Co.* 157 Pa. St. 51. The great weight of authority, however, based upon a review of all the decisions seems to favor the strict application of the rule in regard to the master's liability and where he knows that the employee is inexperienced it is his duty to warn and instruct him, however obvious and apparent the dangers of the employment may be. *Murphy v. Mairs*, 6 N.Y. St. 42; *Atkins v. Thread Co.* 104 Mass. 431.

PERFORATED MUSIC ROLLS NOT SHEET MUSIC WITHIN MEANING OF COPYRIGHT LAW.

"Copyright is the exclusive right of the owner to multiply and to dispose of copies of an intellectual production." *Drone Copyright*, 100. Musical compositions were first protected under the statute 8 *Anne*, 18. In this country they were for the first time specifically protected in 1878. Musical composers had certain rights in their productions at common law, but now their rights depend wholly upon the provisions of the copyright act, such former rights having been superseded by statute. *Holmes v. Hurst*, 74 U. S. 82. An action for penal damages lies for the unlawful representation or performance of a dramatic or musical composition, and if the unlawful representation or performance is given wilfully and for profit, it is a misdemeanor, punishable by imprisonment for a term not exceeding one year. *U. S. Comp. Stat.* (1901), p. 3 415. The copyright in musical compositions is more extensively protected than the copyright in dramatic pieces. *Russel v. Smith*, 15 Sim. 181. The same principle which holds good in regard to books is applied to maps, charts, pictures, musical compositions, etc. The test is not whether the piratical production is an exact copy of the original, but whether it is substantially copied. *Emerson v. Davies*, 3 Story 768. It is true that in some parts of the statutes the words "book," "print," and "musical composition," refer to the intellectual conception as the essential element, and in other parts may refer more particularly to the material form in which it is expressed; but nowhere does either element exclusively exist, because no intellectual conception can be copyrighted until it has taken material shape. *Oliver Ditson Co. v. Littleton*, 67 Fed. 905.

The question whether or not perforated sheets of paper could be an infringement of copyrighted sheet music was first decided in 1888, by the case of *Kennedy v. McTammany*, 33 Fed. 584. In that case the defendant manufactured perforated papers which, when used in organettes, produced the music alleged to be pirated. As was said in that decision, to the ordinary mind it is certainly a